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Reserve

Status of Agricultural Labor Under the Unemployment
Compensation Laws of the States (2)

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Status of Agricultural Labor Under the
Unemployment Compensation Laws of the States

Part I

Existing Laws and Coverage.

All of the 48 States, the District of Columbia, Alaska and Hawaii now have unemployment compensation laws which are compulsory for employers hiring a certain minimum number of workers during a certain number of days, each in a different week. None of these States, however, cover all workers who may become unemployed.^{1/} Small establishments are generally excluded from State unemployment compensation laws. The most common method is to exclude establishments which hire less than a given number of workers, or whose employment of such a number lasts for only a short time. Thus, 42 States and Alaska base their coverage solely on the basis of the number of workers employed for an employer.^{2/} Twenty-three of these States and Alaska cover only employers who have hired eight or more workers on any one day within each of at least 20 different weeks, and Iowa covers employers of eight or more workers who have been employed within each of at least

^{1/} State laws do not enumerate covered employments. They usually state that all employments and employers of a certain minimum number of workers or employers having a certain minimum pay roll are covered and then proceed to list those employments which are excluded.

^{2/} Alabama	Maine	North Carolina	Texas
Colorado	Michigan	North Dakota	Vermont
Florida	Mississippi	Oklahoma	Virginia
Georgia	Missouri	South Carolina	Washington
Indiana	Nebraska	South Dakota	West Virginia
Kansas	New Jersey	Tennessee	

^{1/}
15 different weeks.

Illinois and Wisconsin cover employers who have hired six or more workers within each of certain periods. The Illinois statute provides coverage only for employers who have hired at least this number of workers within each of 20 weeks, and that of Wisconsin provides coverage for employers who have employed this number of workers within each of 18 weeks.^{2/} Connecticut covers employers who have hired five or more workers and seven States - California, Louisiana, Maryland, Massachusetts, New Hampshire, Rhode Island and New York - cover employers of four or more workers. All of these eight States, with the exception of New York, provide coverage for employers who have hired at least this number of workers within each of at least 20 weeks.^{3/} New York extends coverage to employers who have employed this minimum number of workers within each of at least 15 days.

Arizona and Ohio cover only employers of three or more employees. The law in Arizona provides for coverage of employers who have hired this number of workers within each of 20 weeks, while that in Ohio specifies that such coverage is based upon employment at any one time.

^{1/} The "20 weeks" or "15 weeks" specification does not mean that the workers must have been employed for the whole week. Usually it means that the employer must have employed eight different workers during some day or some portion of a day in each of at least 20 or 15 different weeks, as the case may be.

^{2/} Wisconsin provides an alternative to the 18 weeks requirement by stipulating that where the employer's employment records are made inadequate to permit a determination on the basis of number of employees, the employer is still covered if the total wages payable by him are \$6,000 or more for the year.

^{3/} The Louisiana law provides an option in such coverage; employers who have hired 12 or more workers within each of ten weeks.

The remaining four States (Arkansas, Delaware, Minnesota and Pennsylvania) and the District of Columbia and Hawaii cover employers of one or more workers. All of these jurisdictions, with the exception of the District of Columbia, specify that such coverage be within a period of 20 weeks. The law in the District of Columbia provides for such coverage at any time.

In addition to the above 42 States and Alaska, which base their coverage solely on the number of workers employed for an employer, eight States - Idaho, Kentucky, Montana, Nevada, New Mexico, Oregon, Utah and Wyoming - use the size of the employer's payroll, some as an additional criterion, some as an alternative and some as the sole test to determine whether or not he is to be covered. Thus, Oregon covers those employers who have paid wages during a calendar quarter totaling \$500 or more, and who have employed four or more workers on any one day during such quarter. In Kentucky, the law provides that only those employers are covered who have paid wages amounting to at least \$50 to each of at least four workers during each of three quarters, or who employed eight or more workers within 20 weeks. New Mexico provides coverage only to employees of those employers whose wages during a calendar quarter totals \$450 or more, or who have hired two or more workers within a period of 13 weeks.

The Montana law covers employers who have paid \$500 or more in wages during a calendar year, or who have employed one or more workers

within 20 weeks. In Wyoming, covered employers are those whose wage bill has amounted to \$150 or more during a calendar quarter and who have employed one or more workers within each of 20 weeks. Coverage in Idaho, Nevada and Utah are based upon the payment of wages during a calendar quarter totaling at least \$225, \$140 and \$78, respectively.

Status of Agricultural workers.

Agricultural labor or farm labor is excluded in all States with the single exception of the District of Columbia. Almost all of the States, however, provide that the State administrative agency may permit the voluntary election of coverage by an employer who has too few workers to be otherwise covered or whose business is of a nature which is excluded. Thus, all States, with the exception of Wisconsin,^{1/} permit small firms to elect coverage, and all of them with the exception of Alabama, Connecticut, and Massachusetts, permit farm employers, as well as employers of other excluded services to elect to come under the Act.^{2/} Once so covered, the employer pays contributions and his employees are eligible for benefits on the same basis as employers who are compulsorily covered. Almost all States stipulate that such coverage take effect

^{1/} Prior to 1939, the Wisconsin law permitted small firms to elect coverage, and the amended law provides that employers who have elected coverage are continued as subject employers for a period of three calendar years.

^{2/} In Alabama, Connecticut and Massachusetts the Attorney General has ruled that agricultural employers cannot elect coverage. See 679 Ala. A.G., June 24, 1936; 620 Conn. A.G., Commission Rule 241, Dec. 16, 1936; and 251 Mass. A.G., Commission Rule 13, Sept. 30, 1936. The District of Columbia law includes employers of one or more agricultural laborers so that the absence of a provision for voluntary election of coverage in its law does not affect agricultural employment.

on the date stated in the approval of election and for at least two calendar years.^{1/}

Prior to 1939, Michigan was the only State which specifically defined the term "agricultural labor" in its unemployment compensation law. In 1939, six States (Alabama, Georgia, New York, Oregon, Washington and Wisconsin) and Hawaii amended their unemployment compensation acts or passed separate acts in which a definition of the term "agricultural labor" was inserted. Michigan, in the same year, adopted an amendment to exclude "any service not included as 'employment' under Title IX of the Social Security Act." This general exclusion affects and extends its definition of "agricultural labor". The same general exclusion was also adopted in Alabama and Florida although the latter State does not contain a specific definition of the term "agricultural labor".

The definition of "agricultural labor" included in the amended laws of Alabama and Wisconsin is the same as that specifically inserted in the amended Federal Social Security Act of 1939. By a separate act,^{2/} the legislature of Georgia defined the term "agricultural labor" to include:

- a) the planting, growing, cultivation, harvesting and marketing of trees and the fruits and products thereof; and

^{1/} Connecticut does not specify the effective date or length of coverage. In Alabama and New York, small employers become liable on filing of election, subject to approval.

^{2/} The Georgia Act defining "agricultural labor" is a special act defining "agricultural pursuit" and places employers engaged in this pursuit in the category of "farmers" under any statute relating to farming or farmers.

- b) the production or original manufacture of crude gum (oleoresin) from which is derived or may be derived gum spirits of turpentine and gum rosin.

The amended Act in New York states that the term "farm laborer" shall include any person employed on a farm in connection with:

- a) the cultivation and tillage of the soil;
- b) the planting, cultivation and harvesting of agricultural, horticultural, floricultural, vegetable and food products of the soil;
- c) the raising, feeding and care of livestock, bees and poultry, including all domestic birds or fowl;
- d) the processing, packing, packaging, transporting or marketing of all products of the farms, including those above enumerated, in connection with the operation of a farm; Such services do not constitute farm labor, however, unless they are performed by the employee of the owner or tenant of the farm on which the materials in their raw and natural state were produced, and unless such processing, packing, etc. is carried on as an incident to ordinary farming operations as distinguished from manufacturing or commercial operations."

In Oregon, "agricultural labor" is now defined:

"as any and all labor, used and employed in all branches of farming, and among other things, the cultivation and tillage of the soil, dairying, the production, growing, harvesting and marketing of any and all agricultural and horticultural commodities;

"the raising of livestock, and any practices performed by a farmer, or on a farm as incident to, or in conjunction with such farming operations, together with any and all other labor used and employed by any farmers' cooperative association organized under the laws of the State of Oregon, and operated for the mutual benefit of its members, provided, that such association does not sell its

commodities for non-members in any amount greater in value than such as are sold for its members, and all earnings are apportioned as dividends in accordance with the amount of business transacted by each member through the association."

The definition of the term "farm labor" in the law of the State of Washington includes "services customarily performed by a farm hand on a farm for the owner or tenant of a farm."

The Territory of Hawaii amended its unemployment compensation act in 1939 to include the following definition of the term "agriculture":

" 'Agriculture' includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees or poultry and any practices (including any forestry or lumbering operations) performed on a farm, plantation, ranch, orchard, vineyard or other farm premises as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to carriers for transportation to market; all of the foregoing being subject to the following more specific definitions with respect to 'sugar cane plantations', 'pineapple plantations' and 'other agriculture':

" (a) Farming operations on 'sugar cane plantations' include all operations performed on such plantations as are incident to or in conjunction with the planting, cultivation, irrigation and harvesting of sugar cane; the hauling, fluming or transportation, by whatever means, of sugar cane to the point where such sugar cane is delivered to the mill or mill-yard for first processing;

" (b) Farming operations on 'pineapple plantations' include all operations performed on such plantations as are incident to or in conjunction with planting, cultivation, irrigation and harvesting of pineapples, and the hauling, transportation or handling of produce of the plantation from its fields or principal highway loading stations to canneries or up until the time such produce is delivered to ocean carrier at shipping ports;

" (c) Farming operations performed in connection with 'other agriculture' include all operations of whatever nature performed on the farm or ranch premises incident to or in conjunction with the production of agricultural or horticultural commodities or the raising of livestock, bees or poultry."

Related farm exemptions are found in the statutes of the above States and in those of other jurisdictions. Thus, for example, services for agricultural or horticultural organizations are exempt in Alabama, California, Florida, Massachusetts, Michigan and Wisconsin. In Florida and Michigan this exclusion results from such exception in the Federal Unemployment Tax Act of 1939; in California, Massachusetts and Wisconsin, this exemption is specifically listed in the acts; while Alabama has both a special exemption and the general exclusion of services excluded from employment under Title IX of the Federal Social Security Act of 1939.

Services for farmers' cooperative associations are specifically excluded from the laws of Minnesota and Oregon. In Minnesota, they are excluded only if they deal exclusively with agricultural or dairy products, and if they are exempted from the Federal Unemployment Tax Act. In Oregon, the exclusion applies only if the cooperative has been organized under the State law and is operated for the mutual benefit of its members.

Services in maintenance and operation of irrigation or drainage systems used exclusively for agricultural purposes are excluded from the laws of Alabama, Florida, Michigan, and Wisconsin. In Utah, such services are also exempt if performed on an irrigation system operated on a non-profit basis, but such a system need not be used exclusively for agricultural purposes. In Florida and Michigan, the statutory exemption of these

services result from such exclusion in the Federal Unemployment Tax Act.

Ranch or dude ranch labor is specifically excluded in Wyoming, while persons engaged in the original production of crude gum, turpentine and gum rosin are excluded from the unemployment compensation laws of Alabama, Florida, Georgia, Michigan and Wisconsin. In Florida and Michigan, the exemption results from such exclusion in the Federal Unemployment Tax Act of 1939.

Coverage of Agricultural Labor in the District of Columbia.

Covered employments are not specifically mentioned in the unemployment compensation law of the District of Columbia. Certain employments, however, are specifically exempted. ^{1/} Farm labor, is not among the excepted employments. In fact, the District Unemployment Compensation Board has ruled that "employers engaged in the operation of agricultural establishments, farms, nurseries and dairies are included within the Act". ^{2/} Such employers, therefore, who employ one or more individuals are required to pay contributions to the Fund and their employees generally are eligible for unemployment compensation benefits. ^{3/}

^{1/} The term "employment" is defined as "any service, of whatever nature, including employment in interstate commerce - - - within the United States, by any individual under any contract of hire, oral or written, expressed or implied, so long as the greater part - - - of the service performed under such contract is performed within the District - -". Public Act No. 386, 74th Congress, (H.R. 7167), section 1 (b).

^{2/} Rules and Regulations Relating to Employers Under the District of Columbia Unemployment Compensation Act, Article I.

^{3/} The Act makes provision for contributions by covered employers and by the District of Columbia, but not for payment of contributions by covered employees.

In 1938 contributions amounting to \$3,214 were received from employers coded as "horticultural and agricultural services".^{1/} The number of reporting agricultural establishments which made contributions varied from six in February and November to 11 in May and September. Among these employers were tree surgeons, landscape gardeners and a nurseryman. The number of covered agricultural workers in these establishments varied from 79 in January to 146 in April, the average for the year being about 100. The total wages received by these workers amounted to about \$109,000.^{2/}

Total unemployment compensation benefits amounting to \$1,475 were paid out to twenty agricultural and horticultural employees in 1938, the first year in which benefits were paid.^{3/} The average (median) check

1/ Contributions from employers engaged in these services amounted to about \$168 in 1936 and about \$556 in 1937. For the first 9 months in 1939 they amounted to about \$2,085.

2/ This includes the cash value of perquisites, if any were paid. The Act provides that the employer report the cash value of perquisites paid to workers as part of or in lieu of wages in cash. Such a sum then becomes taxable and is included also in the computation of the weekly wage for benefit payment purposes. The Board has ruled that food and lodging which forms part of the employee's wages shall be included, for the purpose of computing contributions, at not less than \$7.75 for a seven day week. The cash values of these perquisites are broken down as follows:

Board: 75 cents per day, which includes three meals;

Board: 25 cents per meal, if less than three meals are given;

Lodging: \$2.50 per week, or 40 cents per day.

3/ Began February 5, 1938. For the first nine months of 1939, benefits amounted to about \$1,243.

issued to claimants in that year amounted to nine dollars over an average period of twelve weeks. The units of payment were as follows:

				<u>All Payments</u>	
				<u>Number</u>	<u>Amount</u>
Total				185	\$1,474.50
Less than \$1.00				X	X
\$1.00 less than \$1.99				2	2.50
2.00 " " 2.99				4	9.00
3.00 " " 3.99				17	59.00
4.00 " " 4.99				8	32.00
5.00 " " 5.99				29	155.50
6.00 " " 6.99				20	121.00
7.00 " " 7.99				8	60.00
8.00 " " 8.99				30	248.00
9.00 " " 9.99				15	135.00
10.00 " " 10.99				X	X
11.00 " " 11.99				11	122.00
12.00 " " 12.99				25	308.00
13.00 " " 13.99				10	131.50
14.00 " " 14.99				2	28.00
15.00 " " 15.99				2	30.00
16.00 " " 16.99				1	16.00
17.00 " " 17.99				1	17.00

In addition to the employers classified as being engaged in "horticultural and agricultural services", there were 14 dairies, which, in 1938, paid contributions amounting to about \$81,740 to the Unemployment Compensation Board. These dairies paid out \$2,722,046 in wages. It is not known how many employees they employed or how many of them received benefits in that year.

Part II

Rulings and Interpretative Decisions of State Unemployment Compensation Agencies Affecting Farm Labor Before the 1939 Amendments to the Federal Social Security Act.

Before 1939, with the sole exception of Michigan, the term "agricultural labor" was not defined in any State unemployment compensation law. In the absence of a definition of the term "agricultural labor" as used in the statutes, many States resorted to the ordinary meaning of the term as defined by Webster. Some States consulted its meaning where it was defined in other labor legislation, or regulations relating to such legislation. Still others adopted the definition of the term of the Federal Bureau of Internal Revenue.^{1/} In any case, a definition of "agricultural labor" was not as difficult to find or construct as the application of such a definition to various conditions and circumstances. Every State, therefore, was faced with the problem of determining whether the exclusion of "agricultural labor" applied to an occupation which, broadly considered, was agricultural in character. For this reason, the interpretation of the State agencies, in charge of enforcing the unemployment compensation law, with respect to the extent of the exclusion of "agricultural labor" were as important as the specific exclusion itself.

The claims which in these instances came up before the States were those involving services which, as already noted, were all agricultural in nature. In searching for conclusive factors in the construction of

^{1/} See, U. S. Treasury Department, Bureau of Internal Revenue, Employees' Tax and the Employer's Tax Under Title VIII of the Social Security Act, Regulations 91 article 6; and Excise Tax on Employers Under Title IX of the Social Security Act, Regulations 90, article 206(1).

the State acts as applied to the coverage of agricultural labor, therefore, it was not only the nature of the work performed or the character of service that determined whether the particular occupation was commercial or agricultural, but also whether the work was performed on the farm or off the farm and whether a farm employer-employee relationship existed. All of these factors governed the ultimate decision as to what services constituted farming or were incidental to farming. Further perplexing questions were those relating to the meaning of terms used in defining the term "agricultural labor", such as: What constituted "a farm"? - what represented "processing, etc."? - what was to be considered "live-stock"? - what operations were "incidental to ordinary farming operations"?-

For administrative guidance and effectual enforcement, some States specifically inserted a working definition of the term "agricultural labor" in the rules and regulations governing the administration of their unemployment compensation laws. A number of States consulted court decisions involving definitions of the term. Other States adopted no standard definition. All States, however, were obliged to issue interpretative decisions, opinions or other official explanations as claims for unemployment compensation benefit payments arose or when employers were in doubt whether their services were taxable under the law. These legal opinions and administrative decisions, for the most part, were in accordance with those of the Federal Bureau of Internal Revenue where the conditions and circumstances surrounding the cases were the same or approximately the

the same as in those cases upon which the Bureau had ruled. There were, however, State departures from Federal rulings.

The following review of State interpretations and decisions affecting agricultural labor is not intended to be a complete coverage of the cases upon which decisions had to be made. It is, rather, an attempt to indicate the general direction taken by the States on coverage questions which arose before the Federal Social Security Act was amended in 1939. The review should serve as a canvass of comparison with the changes that the States are likely to make in accordance with the broadened definition of the term "agricultural labor" which became effective on January 1, 1940.

Services Traditionally Prosecuted on a Farm.

Practically all States which excluded "agricultural labor" from the provisions of their unemployment acts exempted the following services traditionally prosecuted on the farm by persons in the employ of the owner or tenant thereof; cultivation and tilling of the soil, the harvesting of crops, the raising, breeding and management of cattle and sheep, swine and hogs, draft or farm horses, poultry and bees.

In Michigan, for example, the General Counsel of the Unemployment Compensation Commission ruled that the cultivating and harvesting of corn, oats, hay, clover, soy beans and peppermint were functions incident to ordinary farming operations and persons engaged in these services were exempt from the unemployment compensation law.^{1/} In California, the Unemployment Reserves Commission held that services of employees on a hog

^{1/} Social Security Board, Unemployment Compensation Interpretation Service, State Series Supplement, 1379 Michigan.

ranch, on farms and orchards performing services of irrigation, fertilization, pruning, spraying, fumigating, dusting and plaining were ruled exempt as agricultural.^{1/} In Texas, cattle ranching and raising of livestock,^{2/} in Utah, the raising of cattle and the raising and shearing of sheep on ranches,^{3/} in Nevada, the caring and shipping of livestock of ranchers who grazed their stock on the public domain or on their own property,^{4/} in Pennsylvania and Montana, the breeding, raising, feeding and management of livestock on the farm, draft or farm horses and swine,^{5/} in Georgia, the raising of bees on the farm and the selling of their honey,^{6/} in Illinois, the raising of ducks on the farm,^{7/} and in New York, the breeding, raising, training, exhibiting and selling horses and the growing of grain and forage crops as feed for the livestock,^{8/} were held to be agricultural services exempt from the unemployment compensation law.

On the other hand, persons engaged on the farm in the traditionally farm-performed services were not deemed as agricultural laborers within the meaning of the law when they were employed for an employer who was not the owner or tenant of the farm. In California, for example, the Unemployment Reserves Commission ruled that a fruit-picking contractor who con-

^{1/} Ibid, 14, 747 and 748 California.

^{2/} Ibid, 48 Texas.

^{3/} Ibid, 482 and 1746 Utah.

^{4/} Ibid, 773 Nevada A.G.

^{5/} Ibid, 480 Pennsylvania and 1381 Montana.

^{6/} Ibid, 1124 Georgia.

^{7/} Ibid, 1731 Illinois.

^{8/} Ibid, 1743 New York.

tracted with various farmers to harvest their crops was deemed to be an employer and not an employee of the farm owner, and, held that the employees of such a contractor were not exempt as agricultural laborers under the law.^{1/} Similarly, the California Unemployment Reserves Commission ruled that employees engaged in the traditionally farming pursuits who were contracted out by their farm employers to other growers or ranchers, and who maintained such persons on their payroll during such time of employment, were not agricultural laborers for the period of time they spent in the service of an outside grower or rancher.^{2/} The same rule applied to workers employed by commercial or cooperative packing houses who were hired out to cut, pick or harvest crops of growers from whom the packing house employers purchased their crop.^{3/}

Also, in Illinois, the Division of Unemployment Compensation held that services performed by employers on the farm but in the employ of a seed company in connection with the detasseling of the seed rows and

1/ Ibid, 742 California.

2/ Ibid, 9 California.

3/ Ibid, 19 California; Before the Federal Bureau of Internal Revenue ruled that the services performed by workers for a cooperative marketing association of producers were not agricultural, the Commission in California ruled that the employees of marketing cooperatives who harvested the products for the exclusive benefit of the members of such cooperative were agricultural laborers. But, ruled the Commission, if the cooperative employees were contracted out to growers not members of the cooperative, the services of such cooperative employees were not deemed to be agricultural for the period of time spent in service of the outside grower, (See, Ibid, 9 California).

hybridization of corn were not agricultural.^{1/} Again, in Texas, the Unemployment Compensation Commission ruled that services performed by workers in pecan and peach groves owned or tenanted by the employer constituted agricultural operations, but denied this classification to employees of a company performing such services on the farm of other growers.^{2/}

The farm employer-employee factor governed also the classification of persons engaged in threshing operations in those States in which the question arose. Thus, Michigan and Minnesota held that services rendered by an individual who was engaged in threshing farm crops for a number of farmers were not excluded from their unemployment compensation laws. Such services, it was observed, were not performed on a farm by persons in the employ of the owner or tenant thereof, but rather by an individual engaged in itinerant threshing business.^{3/}

In at least two cases which came up for a ruling, however, the administrative agency of the State waived the requirement that an employee performing harvesting or other such services on a farm had to be in the employ of the owner or tenant of the farm before being deemed as an agricultural laborer. Thus, in Mississippi, the General Counsel to the Unemployment Compensation Commission ruled that labor engaged in harvesting crops whether in the employ of the farmer or of a packing or canning establishment was "agricultural labor" and exempt from the Act.^{4/} Similarly,

^{1/} Ibid, 1732 Illinois.

^{2/} Ibid, 46 Texas.

^{3/} See, Ibid, 752 Michigan and 759 Minnesota.

^{4/} Ibid, 33 Mississippi.

in Wisconsin, the Unemployment Reserves Department held that employees in the employ of a hemp mill which furnished "fieldmen" for cutting, retting and bundling hemp in the field preparatory to bringing it to the mill were "agricultural laborers" despite the fact that their wages were paid directly by the owner of the mill and not by the owner of the hemp farms.^{1/}

Moreover, when activities traditionally performed on the farm were divorced and separated from the farm and prosecuted elsewhere, they were not regarded as agricultural, and persons engaged in them were not deemed as agricultural laborers within the meaning of the State unemployment compensation laws. For example, in Montana, the attorney of the Unemployment Compensation Commission ruled that labor performed by an employee for a commercial feeding concern, a livestock commission company or a stockyards concern feeding or raising livestock as a part of commercial operations was not agricultural within the meaning of the Act.^{2/} Similarly, in Wyoming and Minnesota, services for stockyards handling livestock in transit were held to be commercial and not agricultural.^{3/} In Minnesota, the Unemployment Compensation Division also held that the services of individuals on a livestock farm operated by a meat packing company was not incidental to farming operations but incidental to the operations of

^{1/} The owner of the mill charged the labor cost for harvesting the hemp to the account of the farmer and deducted it from the price which he paid for the purchase of the hemp. See, Ibid, 51 Wisconsin.

^{2/} Ibid, 1381 Montana.

^{3/} Ibid, 1134 Wyoming and 1129 Minnesota.

the packing plant for whom the stock was fed and fattened.^{1/}

In the States in which cases arose, persons engaged in feeding and otherwise caring for foxes, minks or other fur-bearing animals and not performing other labor on the farm, were not considered to be in agricultural labor.^{2/} Foxes, minks and similar animals were not deemed to be livestock, and the services connected with their production and care were interpreted as not constituting ordinary farming operations.

Services Performed in Greenhouses and Nurseries.

In accordance with the ruling of the Federal Bureau of Internal Revenue of October 1937, hothouse and nursery labor employed in greenhouses and nurseries located on a farm in connection with the cultivation and processing of the soil or in the planting, raising, transplanting or harvesting of vegetables, fruits or horticultural and floricultural commodities were excluded as "agricultural labor" under the unemployment compensation laws of almost all of the States in which the issue arose.^{3/} All

^{1/} Ibid, 1129 Minnesota.

^{2/} Ibid, 484 Utah; 651 Utah A.G.; 473 Connecticut; 750 and 1377 Michigan; 1739 New York.

^{3/} See Treasury Department, Bureau of Internal Revenue, Internal Revenue Bulletin, C.B., 1937-2, 409. Prior to October 1937, the Federal Bureau of Internal Revenue held (January 1937) that employees of hothouses and nurseries were not agricultural laborers, and the following States in which such cases arose followed this ruling: Connecticut, Maine, Massachusetts, Mississippi, North Carolina, Rhode Island, Texas, Utah, Kentucky, Michigan, Minnesota, and South Carolina. See, Social Security Board, Unemployment Compensation Interpretation Service, State Series, Supplement, 25 and 474 Conn.; 27 Maine; 30 Massachusetts; 35 Mississippi; 37 North Carolina; 39 Rhode Island; 47 Texas; 55 Utah; 475 Kentucky; 751 and 1380 Michigan; 762 and 764 Minnesota; and 769 South Carolina.

of these States, ^{1/} with the exception of New Jersey and Montana, excluded employees in these services only if the nursery or greenhouse on or in which they were employed were located on a farm. ^{2/} New Jersey held that labor employed by nurserymen or horticulturists in the cultivation and processing of the soil whether on the farm or elsewhere was agricultural and therefore exempt from the law. ^{3/} Montana expressly construed and considered a greenhouse as a "farm", irrespective of its location. ^{4/}

However, the rulings on coverage with respect to these services have not been uniform in all the States in which the question arose. For example, in January 1938, the Unemployment Compensation Commission of New Mexico ruled that labor performed in florists' greenhouses was not within the classification of "agricultural labor" which is exempt from the

^{1/} Ibid, 1127 Maryland; 1128 Massachusetts; 1131 Texas; 1132 Virginia; 1376 Maine; 1328 Montana; 1385 Connecticut A.G.; 1555 Michigan; 1734 Illinois; 1736 New Jersey; 1747 Utah.

^{2/} Illinois expressly ruled that services performed in a greenhouse located in a residential area within the corporate limits of a city were not agricultural labor. (Ibid, 1734 Illinois) California and Connecticut have held that workers, in the employ of nurseries but performing work off the property of the employer were not agricultural labor within the meaning of their laws. In California, the Unemployment Reserves Commission ruled that the work of an employee of a nursery who performed landscape gardening for a customer on the latter's property was not agricultural and therefore not exempt from the provisions of the Act. (Ibid, 16 California). In Connecticut, the Attorney General of the State ruled that services performed by a landscaping division on properties other than a nursery was not agricultural labor. Likewise, he ruled that services performed in connection with nursery stock not raised or cultivated by the nursery employer but bought by him for resale on his premises was not agricultural labor (Ibid, 1385 Conn. A.G.).

^{3/} Ibid, 1736 New Jersey.

^{4/} Ibid, 1382 Montana.

provisions of the law.^{1/} Similarly, in Ohio, the Unemployment Compensation Commission held, in August 1938, that regardless of the disturbance under the Federal law, it has not disclosed any change in regard to the status of either commercial flower growers or horticulturists, and therefore services rendered by individuals in the employment of such employers were not within the meaning of the term "agricultural labor".^{2/} The legal department of the Unemployment Compensation Commission of Ohio also held that services rendered in the raising of hot house vegetables were not exempt as "agricultural labor".^{3/}

The services of gardeners or landscape architects, closely related to nursery labor, have been held as not agricultural in California, Georgia and Texas. Thus, in California, the pruning of ornamental or shade trees, the mowing of lawns and other services incidental to the upkeep of residences and estates were not considered agricultural.^{4/} Similarly, the Bureau of Unemployment Compensation in Georgia ruled that a gardener en-

1/ Ibid, 1383 New Mexico.

2/ Ibid, 1558 Ohio

3/ Ibid, 1558 Ohio; until the middle of 1939, Michigan also held that services rendered in the raising of hot house vegetables were not exempt as "agricultural labor", (See, Ibid, 1380 and A-581 Michigan); Likewise, New York ruled that an individual performing services for a nursery was not engaged in farm labor (See, Ibid, 1741 New York). Later, however, this ruling was reversed. (See, Ibid, R-1445).

4/ Ibid, 22 California.

gaged in planting lawns and general gardening around a hunting lodge was not performing agricultural labor.^{1/} In Texas, the services incidental to activities of a landscape architect were ruled to be commercial and not agricultural.^{2/}

Clerks and employees of a nursery, floral shop, retail or wholesale flower establishments were held as performing services not connected with the growing and cultivating of nursery stock or flowers and were ruled to be non-agricultural labor in California, Maryland, Massachusetts, and Virginia.^{3/} Similarly, the Commissioner of the Unemployment Commission in Connecticut ruled that services performed for a nurseryman or commercial flower grower in painting, packing and unpacking crockery used as containers for products sold by such producers were not to be considered agricultural.^{4/}

Services Performed in Raising Mushrooms.

In Minnesota, Pennsylvania, and other States, where it was necessary to rule on services performed by employees of mushroom growers in the planting, cultivating and harvesting of mushrooms, they were interpreted to be non-agricultural in accordance with the original ruling of the Federal Bureau of Internal Revenue.^{5/} Pennsylvania later reversed its

^{1/} Ibid, 1122 Georgia.

^{2/} Ibid, 1131 Texas.

^{3/} Social Security Board, Unemployment Compensation Interpretation Service, State Series, Supplement, 16 California; 1127 Maryland; 1128 Massachusetts; 1132 Virginia.

^{4/} Ibid, 1553 Connecticut, R.

^{5/} Ibid, 765 Minnesota; 479 Pennsylvania.

^{1/} position when the Federal Bureau of Internal Revenue changed its stand and, in December 1937, declared that these services constituted "agricultural labor" when they were performed in cellars, caves, barns, etc. located on the farm. ^{2/} California also followed the Federal ruling in holding that services in raising mushrooms were exempt as agricultural. ^{3/}

However, despite the Federal ruling, the Counsel to the Unemployment Compensation Commission in Delaware held that persons engaged in the growing of mushrooms were not agricultural laborers within the meaning of the law. ^{4/} Similarly, the District Court in Colorado ruled that services performed in raising mushrooms were commercial and not agricultural in character within the meaning of the Colorado Unemployment Compensation Act. ^{5/}

Services Performed in the Processing of Animal and Agricultural Products.

Under this head fall some of the following types of services: dairying, poultry raising and chicken hatching, raising of grapes and wine production, rice milling and cotton ginning.

In practically all the States in which the question of coverage of workers employed on dairy farms arose, it was held that the exception accorded to agricultural labor extended only to services performed in connection with the raising and management of dairy stock on a farm of the

^{1/} Ibid, 1745 Pennsylvania.

^{2/} Treasury Department, Bureau of Internal Revenue, Internal Revenue Bulletin, C.B., 1937-2, 417.

^{3/} Social Security Board, Unemployment Compensation Interpretation Service, State Series, Supplement, 1372 California.

^{4/} Ibid, 1374 Delaware.

^{5/} Industrial Commission of State of Colorado v. the Great Western Mushroom Co., See, Ibid, 1386 Colorado, Ct. D.

owner or tenant thereof, and to the ordinary processing, packing, packaging, transporting and marketing of materials which were produced on the farm incidental to dairy farming. For example, services performed by employees of the owner or tenant of the farm in the feeding and milking of cows, the transporting of such milk to the milkhous, the separating, cooling and filling of cans for delivery to creamery or bottling plant for the farmer were exempt as agricultural.

On the other hand, the services performed by employees of an owner or tenant of a farm or of a creamery in connection with the handling of cattle not maintained or fed on the farm or fed feed not made on the farm, or the commercial handling of milk or other dairy products purchased from other farmers were not considered agricultural. Thus, for example, the pasteurizing, bottling, packaging and distributing of milk etc. or the preparation for market of butter, eggs, cream, which the employer purchased from others were ruled as not constituting agricultural labor within the meaning of the law.^{1/}

In States where a ruling was made with respect to the services performed on poultry farms, it was held that the raising, feeding and management of poultry on a farm were exempt as agricultural labor. But, it was held, the operations of racking, incubation and sex segregation of chicks performed in a hatchery, even though located on a poultry ranch, were commercial rather than agricultural in nature, and the persons engaged in them were not agricultural laborers within the meaning of the

^{1/} See, Ibid, 469 and 1368 California; 28 Maryland; 52 and 56 Utah; 472 and 1136 Connecticut; 478 Pennsylvania; 758 and 1556 Michigan; 760 Minnesota; 769 South Carolina; 1135 Alaska A.G.; 1740 New York; 1744 Oregon; 38 Rhode Island; 768 Montana; 1121 and 1375 Georgia.

^{1/}
law.

A scheme for segregating the above two types of services for purposes of coverage was advanced by the Unemployment Reserve Commission of California. In this State, the Commission ruled that if a hatchery was situated on a farm and was operated by the employees of the owner or tenant of the farm who also performed services in the raising, feeding and management of poultry, the services of such employees were to be segregated and contributions computed only on wages paid for services rendered within the hatchery. The Commission further held that if such a segregation was not or could not be made, the entire services of these employees were to be considered as in subject employment. Where, however, one type of service was merely incidental in measure of time to the other, then, even though it is possible to segregate the one type from the other, the incidental service was to be disregarded in determining whether the employee was engaged in "agricultural labor" or "subject employment".^{2/}

In the case of the production of grapes and wine, the Unemployment Reserves Commission in California held that services performed for the owner or tenant of a vineyard in the cultivation, irrigation, pruning and harvesting of grapes constituted agricultural labor. But, it ruled, the crushing of grapes and other processing operations in wine production as well as the packaging, transporting and marketing of wine were manu-

^{1/} Ibid, 483 Utah; 1551 California and 1735 Iowa.

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^{2/} Ibid, 1551 California.

facturing and commercial services not incidental to ordinary farming.^{1/}
The California Unemployment Reserves Commission further held that if the employees of the owner or tenant of the farm performed the services of crushing and other wine processing of grapes as well as performing the services of cultivating and irrigating the soil, the pruning of the vines and the harvesting of the crop, the two types of services were to be segregated as between subject and exempt employment.^{2/}

In the States where the question of coverage arose with respect to cotton ginning and rice milling, it was held that employees engaged in these services for an employer who was not the operator of the farm on which the cotton or rice was produced were not agricultural laborers. In South Carolina, for example, the General Counsel to the Unemployment Compensation Commission ruled that ginning of the producer's own cotton was incidental to ordinary cotton farming and the employees so engaged were agricultural laborers. But, stated the Commission, the ginning of cotton for others was a commercial operation, and the employees performing this service were not exempt from the provisions of the Act.^{3/}

^{1/} Before 1937, the Unemployment Reserves Commission of California did not follow the ruling of the Federal Bureau of Internal Revenue which deemed employees of cooperatives as not constituting agricultural laborers. Up to 1937, therefore, the Commission interpreted the services performed for cooperative wineries as agricultural. (See, Ibid, 4 California). On the other hand, in accordance with Federal regulations, the Commission held that workers in the employ of commercial wineries were not exempt as agricultural laborers. (See, Ibid, 10 California).

^{2/} Ibid, 1552 California.

^{3/} Ibid, 1728 California and 769 South Carolina.

Services Performed in the Packing and Processing
of Agricultural Products.

In accordance with the regulations of the Federal Bureau of Internal Revenue, the States generally held that services performed by an employee in connection with the processing, packing, transporting or marketing of farm products constituted "agricultural labor" only when these services were performed by an employee of the owner or tenant of the farm on which the product in its raw or natural state was produced, and provided, further, ^{1/} that such operations were incidental to ordinary farming. Some of the major factors considered by the States which had to determine whether or not services performed by employees of packing houses were agricultural labor were as follows:

- a) Whether the labor was employed in a packing house which handled farm products produced exclusively on the farm of which the operator or packing house was the owner or tenant;
- b) whether it was the general custom and practice in the particular type of farming to perform the packing operation in question;
- c) whether the packing house was located on or close by the farm whereon the produce was grown, and
- d) whether the employees engaged in packing the produce were the same employees who cultivated the soil and reaped and harvested the crops.

In California, for example, services performed for a farmer by employees who were engaged in packing "iceberg" lettuce for market at shipping

^{1/} Social Security Board, Unemployment Compensation Interpretation Service, State Series, Supplement, 1366 and 1369 California; 771 Virginia; and 1139 Oregon, Ct. D.

terminals not located on the farm were held to be agricultural.^{1/} It was stated that owing to the nature of the product, such packing operations were carried on as a general custom and practice in this particular type of farming.^{2/} Similarly, in Georgia, the Bureau of Unemployment Compensation held that employees of a vegetable grower engaged in the cultivation, growing, washing, packing and shipping of vegetables from the grower's farm were engaged in agricultural labor, even though the washing and packing were done off the farm. The Bureau ruled, however, that employees of vegetable growers engaged in processing, packing and shipping of such produce raised on the farms of other growers were not engaged in agricultural labor.^{3/} In Virginia, the Unemployment Compensation Commission held that if the same workers raised and harvested peas and beans and also shelled them for the same employer they were agricultural workers exempt from the pay-roll tax. But, ruled the Commission, if the services of employees were limited to the shelling of vegetables, they were not to be considered as engaged in agricultural labor.^{4/} California held that services performed by employees of a farm in the drying, slicing, pitting, tray packing, sulphur treating, etc. of apricots were agricultural on the grounds

^{1/} Ibid, 1726 California.

^{2/} The operations involved in packing lettuce are generally not conducted on a farm but at some location where adequate loading facilities are available. Usually, however, the same individuals are employed in cutting and packing the product.

^{3/} Op. Cit., 1120 Georgia.

^{4/} Op. Cit., 1749 Virginia.

that they were performed, for the most part, by the same individuals who cultivated and harvested the crop.^{1/}

On the other hand, where the question arose with respect to the coverage of packing or warehouse workers employed by a cooperative or mutual marketing association of farmers, the States ruled that they were not excluded as agricultural laborers.^{2/} These States held that the packing of products even though produced on the farm of the members of such an association were not incidental to the carrying out by the farmer of his normal activities on the farm, but involved the substitution of collective action in the performance of functions otherwise normally left to commercial packers.^{3/}

The processing and marketing of tobacco by persons employed for a company which performed these services for a group of farmers were held not to be agricultural labor in Connecticut and Kentucky.^{4/} In a subsequent ruling, the Unemployment Compensation Commission in Connecticut ruled, however, that individuals employed in the warehouse of a company engaged in raising and processing its own tobacco were performing agri-

1/ Op. Cit., 1727 California.

2/ Op. Cit., 34 Mississippi; 42 Texas; 49 Utah; 650 Oregon A.G. and 1356 California; 1126 Maine.

3/ Before 1937, when the Federal ruling on packing house labor employed for cooperative marketing association of farmers was not in force in California, the Unemployment Reserves Commission of the State held that employees of a cooperative association engaged in packing and processing of farm products of its members were agricultural laborers within the meaning of the Act. It ruled, however, that the payroll of the employees of the cooperative who dried and packed fruit for growers who were not members of the cooperative was to be segregated and taxed under the Unemployment Compensation Act. (See, Op. Cit., 8, 9 and 19 Calif.).

4/ Op. Cit., 26 Connecticut and 475 Kentucky.

cultural labor.^{1/}

Persons performing services connected with the storing or warehousing of agricultural products were interpreted as agricultural laborers only in certain circumstances. In Maine, for example, the Unemployment Compensation Commission ruled that services for a farmer in storing potatoes grown on his own farm in warehouses which he owned or controlled constituted agricultural labor. The same services, however, performed for a farmer who owned or controlled such a warehouse in connection with his own enterprise as a potato grower but who also acted as a warehouse man for other potato growers, were deemed not to constitute agricultural labor.^{2/}

Services Performed in Miscellaneous or Related Farm Employments.

The rulings of the States with respect to the coverage of workers engaged in the growing and harvesting of crude gum (oleoresin) have not been uniform. Thus in Mississippi and South Carolina, the authorities have been unanimous that the turpentine or naval stores business, carried on by extracting the sap of pine trees and converting it into rosin and spirits of turpentine, did not involve "agricultural labor" and the services performed in such business came within the scope and operation of their unemployment compensation laws.^{3/} On the other hand, the District

^{1/} Op. Cit., 1730 Connecticut, R.

^{2/} Op. Cit., 1126 Maine.

^{3/} Social Security Board, Unemployment Compensation Interpretation Service, State Series, Supplement. See, 32 Mississippi and 40 and 769 South Carolina.

Court in Georgia over-ruled the decision of the State Bureau of Unemployment Compensation by declaring that labor performed in the production of crude gum and in the processing of this product into gum spirits of turpentine and gum rosin was "agricultural labor".^{1/} Similarly, the Attorney General of the State of Alabama reversed the ruling of the State Unemployment Compensation Commission when he interpreted that persons who gathered crude gum were exempt as agricultural laborers from the provisions of the Act.^{2/} At the same time, the Attorney General ruled that persons who processed the crude gum into turpentine and gum rosin did not come in this classification and were not exempt from coverage.

States generally hold that the services performed by craftsmen whose work on the farm was unrelated to ordinary farming did not constitute agricultural labor. In this category were included carpenters, painters, mechanics, cooks, electricians, agricultural engineers, soil chemists, etc. However, individuals employed on the farm of the owner or tenant thereof and ordinarily engaged in agricultural labor but who occasionally performed services not connected with farm work, such as repairing of agricultural equipment, painting a barn, clearing of timber from land to be used for farming, preparing wood in a sawmill on a farm for farm use, etc., were deemed to be agricultural laborers within the meaning of the State laws.^{3/}

^{1/} See, Ibid, 749 Georgia and 1138 Georgia Ct. D.

^{2/} See, Ibid, 468 Alabama and 1384 Alabama, A.G.

^{3/} See, Ibid, 15, 741 and 1729 California; 481 Tennessee; 1136 Connecticut; 1557 Ohio; 1738 New York R; 1748 Utah; 1125 Georgia.

The above interpretation did not apply to such services performed commercially by individuals for a number of farmers. In Wyoming, for example, the legal counsel of the Unemployment Compensation Commission held that an individual engaged in windmill repairing for various farmers was rendering a commercial service to those engaged in agriculture, but ^{1/} he himself was not an agricultural laborer. Also, in California, Michigan and Georgia, employees engaged in the cutting, sawing and preparing for market of wood and timber were held not to constitute agricultural labor. Such operations were generally deemed to be forestry and lumbering, not included within the meaning of the laws or rules or regulations of the States. ^{2/}

Services performed by office and clerical employees employed on a farm were generally held by the States as not constituting agricultural labor. In Texas, however, the Unemployment Compensation Commission ruled that all clerical employees located on the farm in the employ of the owner or tenant thereof constituted agricultural labor and exempt from the law. ^{3/} Other States, like California, for example, provided for a segregation of services if a farm employee performed both clerical and farm work. If an employee performed bookkeeping, timekeeping, stenography, typing, etc. in addition to his regular farmhand duties, and the time devoted to each was substantial, the Unemployment Reserves Commission ruled that contributions were required on wages paid to such workers as a bookkeeper, timekeeper, etc. If, on the other hand, a person performed bookkeeping, etc.,

^{1/} Ibid, 1133 Wyoming.

^{2/} Ibid, 1729 California, 757 Michigan and 1125 Georgia.

^{3/} Ibid, 45 Texas.

in addition to his regular farm services, and the bookkeeping, etc. were incidental to his farm services and trivial in amount of time, the bookkeeping, etc. was to be disregarded, and all services performed by such an employee was to be considered as agricultural and exempt from the provisions of the law.^{1/}

The policy of segregation of services was applied in Nevada with respect to other than clerical services performed by a farm hand. The Attorney General of that State ruled that employees of a farmer who worked in a service station or in a general merchandise store maintained by the farmer on the farm were not exempt as agricultural laborers. They were, however, excluded from the law for services performed on the farm in connection with ordinary farming.^{2/}

In regard to the status of employees engaged in trucking farm produce, the States generally held that hauling of farm products to and from the farm by an employee of the farmer as an incident to other farm work was agricultural labor. If the trucking of farm produce was performed under contract by an individual or concern not engaged in agriculture, his employees were held as not constituting agricultural labor.^{3/}

Individuals employed as salesmen in offices, stores, nurseries, and other establishments selling flowers, plants, shrubs or trees were not held as agricultural laborers in all the States in which the question of their coverage arose. The same rule applied to persons engaged in canning of agricultural products regardless of the fact that such products were

^{1/} Ibid, 1370 California.

^{2/} Ibid, 773 Nevada A.G.

^{3/} Ibid, 1381 Montana; 1733 Illinois and 1554 Hawaii.

produced on the farm on which the canning was performed. Oyster farming was deemed non-agricultural labor in Connecticut.^{1/} In Pennsylvania, it was held that services of employees in training, conditioning and driving race horses were agricultural if they were rendered upon the farm of the owner or tenant thereof, but ceased to be agricultural when performed away from the farm of the owner or tenant.^{2/} Kentucky and Colorado held that services performed for mutually operated ditch companies were rendered to the ditch companies and not to the farmers who were members of the company. The services of the employees of such company, therefore, were not considered "agricultural labor".^{3/}

1/ Ibid, 473 Connecticut.

2/ Ibid, 477 Pennsylvania.

3/ Ibid, 475 Kentucky and 647 Colorado A.G.

